



10/14/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant(s): Friddle *et al.*

Group Art Unit: 1652

SEP 10 2003

Application No.: 09/940,921

Examiner: M. Monshipouri TECH CENTER 1600/2900

Filed: 08/28/2001

Title: Novel Human Kinase Proteins and
Polynucleotides Encoding the Same

Att Docket No.: LEX-0227-USA

#13

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON
FAILURE TO RECEIVE OFFICE ACTION UNDER 37 CFR § 1.181**Commissioner for Patents
Alexandria, VA 22313

Sir:

Applicants' representatives acknowledge the receipt of the Notice of Abandonment, mailed on August 7, 2003 (Paper No. 12), for failure to respond to an Office action mailed on February 4, 2003. A diligent search of the file jacket and docket records indicates that the Office action in question was not received.

It is Applicants' representatives' practice to log all mail received regarding US cases into a Mail Log. Therefore as evidence, enclosed is a copy of Applicants' representatives' Mail Log for US cases during the month of February 2003 (**Exhibit A**), wherein the non-received Office action would have been entered had it been received. The present case is Attorney Docket No. LEX-0227-USA. As evidence that the non-received Office action was not received, it does not appear on the Mail Log for February 2003. According to the Notice of Abandonment, the Office action was mailed on February 4, 2003. Applicants' representatives note that another Office action, in Attorney Case Number LEX-0175-USA, was also mailed from the Office on February 4, 2003 and was received on February 7, 2003 (the cover sheet (PTO-90C) for this communication is shown as **Exhibit B**) and entered into the Mail Log. Thus, the expected date of receipt of an Office action mailed on February 4, 2003, would appear, from the Mail Log, to have been on or about February 7, 2003. **Exhibit B** clearly evidences that the mail was received, opened, stamped and entered into the Mail Log on February 7, 2003. Had the non-

received Office action been received on that date it too would have been opened, stamped and entered into the Mail Log.

Also included (as **Exhibit C**) are copies of documents mailed from the Office, received and entered into the Mail Log from dates that bracket the expected date of arrival of the non-received Office action. These include documents mailed from the Office on February 3, 2003 (LEX-0387-USA) and February 5, 2003 (LEX-0305-USA , LEX 0235-USA, LEX 0378-USA, LEX 0267-USA). These documents (**Exhibit C**) in combination with the copy of Applicants' representatives' Mail Log for the month February 2003 (**Exhibit A**) indicate that at the time that the non-received Office action would have been expected to have been received, the mail handling and logging systems were in place and fully functional.

As Applicants' representatives have provided evidence that the non-received Office action was not entered into the Mail Log during the time in which it would have been likely to have been entered had it been received, one would expect that the non-received Office action would not have been entered into Applicants' representatives' docketing system. Indeed it was not. As the non-received Office action was mailed on February 4, 2003, it would have been first due on May 4, 2003 and docketed for response on that date. As further evidence that the non-received Office action was not received, Applicants' representatives, respectfully present a copy of their "Case Tracking System- Reminder list" covering May 4, 2003 (**Exhibit D**), the date on which the response to the non-received Office action would have appeared had it been received.

In light of this evidence, that Applicants' representatives had in place a functioning Mail Log and docketing system and that the non-received Office action did not appear in the expected areas of either system, Applicants' representatives, therefore, respectfully request the withdrawal of the holding of abandonment based on failure to receive an Office action under 37 CFR § 1.181.

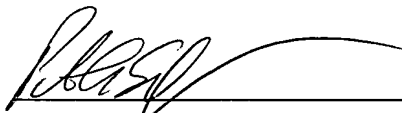
Applicants' representatives believe no fees are required with this Petition to withdraw holding of abandonment based on failing to receive Office action. However, if this is incorrect

the Commissioner is authorized to charge any required fees or credit any overpayment to
Deposit Account No. 50-0892.

Respectfully submitted,

September 3, 2003

Date



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